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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1972

No. 72-5677

CLARENCE JOHN HESSEL,

Petitioner,

vs.

THE HONORABLE STATE OF ARIZONA; ARIZONA HIGHWAY DEPARTMENT OF THE STATE OF ARIZONA; MR. DAVID H. CAMPBELL, Superintendent of the Motor Vehicle Division; MR. JOHN BEYDLER, Hearing Officer for the Motor Vehicle Division; MR. ORVILLE BOWMAN, Pick-up man for the Motor Vehicle Division; MR. CHRISTOPHER LEESE, Supervisor of the Maintenance Division; MR. JOHN AMEY, Attorney for the State of Arizona; MR. L. R. WITTER, Judge for the City of Glendale, Arizona; MR. JERRY EDWARD McCOWN, Police Lt., Glendale, Arizona,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit affirming the district court's order dismissing petitioner's complaint is reported at 465 F.2d 958 and also appears in the Appendix in this cause. (1a)

JURISDICTION

Respondents, State of Arizona; Arizona Highway Department; David H. Campbell, Superintendent of the Motor Vehicle Division, Arizona Highway Department; John Beydler, Hearing Officer for the Motor Vehicle Division, Arizona Highway Department; Orville Bowman, Employee of the Motor Vehicle Division, Arizona Highway Department; Christopher Leese, Supervisor of Building Maintenance of the Arizona Highway Department; and John Amey, Assistant Attorney General and Chief Counsel of the Arizona Highway Department, submit that petitioner has failed to comply with any of the requirements of 28 U.S.C.A., Supreme Court Rules, Rule 23, subsections 1 (b), (biii), (c), (d), (e), (g) & (h). He has failed to include in his petition:

> "1. (b) A concise statement of the grounds on which the jurisdiction of this court is invoked, showing:
>
> * * *
>
> (iii) The statutory provision believed to confer on this court jurisdiction to review the judgment or decree

in question by writ of certiorari.

(c) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court.

(d) The constitutional provisions, treaties, statutes, ordinances, or regulations which the case involves, setting them out verbatim, and citing the volume and page where they may be found in the official edition. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text shall be set forth in an appendix.

(e) A concise statement of the case containing the facts material to the consideration of the questions presented.

* * *

(g) If review of the judgment of a federal court is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for the allowance of the writ."

Respondents are, therefore, unable to determine on what constitutional or statutory basis petitioner is relying to invoke this court's jurisdiction. Subsection 4 of Rule 23, supra, provides:

"The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

It is submitted, therefore, that this court's jurisdiction need not and should not be exercised.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The State statute challenged by petitioner is A.R.S. § 28-1142 A and B:

"A. The superintendent shall, within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death or damage to the property of any one person in excess of one hundred dollars, suspend the license of each operator and all registrations of each owner

of a motor vehicle in any manner involved in such accident, or, if the operator is a non-resident, the privilege of operating a motor vehicle within this state, or, if the owner is a non-resident, the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in a sum which is sufficient in the judgment of the superintendent to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against the operator or owner. Notice of the suspension shall be sent by the superintendent to the operator and owner not less than ten days prior to the effective date of the suspension and shall state the amount required as security.

B. This section shall not apply under the conditions stated in § 28-1143 or to any of the following:

1. To the operator or owner if the owner had in effect at the time of the accident an automobile liability policy with respect to the motor vehicle involved in the accident.

2. To the operator, if not the owner of the motor vehicle, if there

was in effect at the time of the accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him.

3. To the operator or owner if the liability of the operator or owner for damages resulting from the accident is, in the judgment of the superintendent, covered by any other form of liability insurance policy or bond.

4. To any person qualifying as a self-insurer under § 28-1222."

and A.R.S. § 28-1122 (A & B):

"A. The superintendent shall administer and enforce the provisions of this chapter and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the superintendent under the provisions of article 3 of this chapter.

B. Persons aggrieved by an order or act of the superintendent under the provisions of article 3 of this chapter, may, within ten days after notice thereof, file a petition in the superior court of the county

in which the person resides for a trial de novo to determine whether the order or act is lawful and reasonable. The filing of a petition shall not suspend the order or act of the superintendent unless a stay thereof shall be allowed by a judge of the court pending final determination of the matter. The court shall summarily hear the petition and may make any appropriate order or decree."

QUESTION PRESENTED FOR REVIEW

Because petitioner has not complied with Rule 23(c), supra, respondents are unable to determine what is being presented for review. The closest thing to a question is petitioner's statement in his motion:

". . . the honorable judges who ruled upon this matter at the Court of Appeals level failed to consider the Constitutional questions involved in this matter."

Respondents do not agree with that statement and submit there are no questions presented for review.

STATEMENT OF THE CASE

Petitioner was involved in an automobile accident on October 4, 1969. In the accident

report to the State, he claimed insurance coverage which was subsequently denied. Pursuant to A.R.S. Section 28-1142, on December 2, 1969, the Superintendent of the Motor Vehicle Division of the Arizona Highway Department ordered the suspension of the petitioner's driver's license and motor vehicle registration. Petitioner requested and was given an administrative hearing on December 11, 1969, in which it was determined that there was a reasonable probability of a judgment being rendered against him. No appeal from this determination was taken to the Superior Court of the State of Arizona as permitted under A.R.S. Section 28-1122(B). On August 4, 1970, petitioner was tried in the City Court of the City of Glendale for willfully failing to return driver's license and auto registration. Petitioner was found guilty, sentenced by respondent The Honorable L. R. Witter, Judge of the City Court of Glendale, Arizona, and committed to County Jail, Phoenix, Arizona. When booked into County Jail, respondent McCown, Police Lieutenant, City of Glendale, turned over petitioner's driver's license to a representative of the Superintendent of the Motor Vehicle Division of the Arizona Highway Department. On December 10, 1970, petitioner's registration and driver's license were returned to him upon his filing an affidavit of non-suit, a dismissal of the lawsuit previously filed against him and a certificate of insurance as required by A.R.S. § 28-1144. Petitioner has at all times since then been able to operate a motor vehicle upon the roadways of Arizona.

On January 19, 1971, this action was filed in the Federal District Court for the District of Arizona. On March 22, 1971, it was dismissed on respondents' motion for failure to state a claim upon which relief could be granted. An appeal was subsequently taken to the Ninth Circuit Court of Appeals. An opinion was rendered on August 9, 1972 by the Court of Appeals affirming the lower court's dismissal.

ARGUMENT

The Court of Appeals considered all issues presented on appeal and correctly upheld the constitutionality of A.R.S. § 28-1142 A and B. There is nothing for this court to consider on a writ of certiorari.

As is provided in 28 U.S.C.A., Supreme Court Rules, Rule 19 (1. b):

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> * * *
>
> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of

> appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

Petitioner has not shown that any of these reasons for review on a writ of certiorari exist, and indeed they do not.

A brief perusal of the Court of Appeals decision shows that the court considered all questions presented for review and in a well reasoned opinion decided them adversely to petitioner.

The nearest thing that can be gleaned from petitioner's writ as remotely resembling a question is when petitioner claims the Court of Appeals did not consider the constitutional questions involved in the matter. This is simply not true. See Hessel v. State of Arizona, 465 F.2d 958, at page 959, where the court said:

"Mr. Hessel has interwoven his attacks upon his misdemeanor conviction, on the constitutionality of the Financial Responsibility Act, and on the administrative proceedings that resulted in the suspension order. Because he failed to exhaust his available remedies in the state courts, he could not collaterally attack either his misdemeanor conviction or his administrative proceeding in the federal courts, . . ." (App. p 2a)

And also:

"The focal point of his complaint is the challenge to the constitutional validity of Arizona's Financial Responsibility Act. The Act has withstood constitutional attack in Schechter v. Killingsworth (1963) 93 Ariz. 273, 380 P. 2d 136. The Act does not have the constitutional infirmity for which the Supreme Court struck down Georgia's Motor Vehicle Safety Responsibility Act in Bell v. Burson (1971) 402 U.S. 535, 91 S.Ct. 1586, 29 L. Ed. 2d 90. We are not persuaded in this case to disturb Schechter. The efforts to attack the Act on grounds other than those discussed in Bell and Schechter do not have sufficient legal merit to warrant discussion." (App. p 2a)

There simply is no showing that the decision in Hessel, supra, is (1) in conflict with the decision of another court of appeals; (2) has decided an important state question in a way in conflict with applicable state law; (3) has decided an important question of federal law which has not been, but should be settled by this court; (4) has decided a federal question in a way in conflict with applicable decisions of this court; (5) or has so far departed or sanctioned a departure from accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

Petitioner, as can be seen from the statement of facts, did not avail himself of his judicial remedies after the administrative hearing. The Arizona Supreme Court has held in Schecter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963) that a hearing must be provided prior to the suspension of an individual's license. See Schecter, supra, at page 282 where the court said:

> ". . . this Court believes it is implied in this statute that, when requested, an aggrieved person shall have an administrative hearing before the suspension order becomes effective."

And at 283:

> ". . . we hold that the administrative hearing provided by A.R.S. Section 28-1122, subd. A must, if requested, be conducted

prior to the effective date of an order of suspension under the act."

Petitioner did have the administrative hearing provided prior to the effective date of his license suspension. And as pointed out by the court in Schecter, supra, at page 284, the scope of the hearing is limited:

". . . the superintendent need not decide on the basis of conflicting evidence whether a motorist was in fact, culpable, but must determine if there is any reasonable possibility that a judgment will be recovered against him and the amount thereof. . . ."

After petitioner was afforded the hearing contemplated by Schecter, supra, he did not avail himself of the appeal to Superior Court provided by A.R.S. § 28-1122 (B), supra.

Clearly the hearing afforded petitioner, as described in Schecter, supra, falls squarely within what was contemplated by Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971) at page 542:

". . . due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." (Emphasis theirs)

And at 540:

> ". . . we hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee."

Finally as can be seen from the statement of facts, the issues raised by petitioner were moot since prior to the time his action was filed his driving privileges had been restored.

This court has struck down a portion of the Arizona Financial Responsibility Act in Perez v. Campbell, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971). Specifically this held that A.R.S. § 28-1163 (B) was rendered invalid by the Supremacy Clause. A brief perusal of that decision reveals that it was limited in scope to that one section of the Financial Responsibility Act and did not affect the remainder. See Perez, supra, page 643, note 10.

CONCLUSION

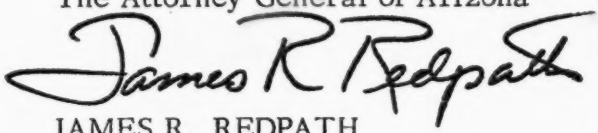
As the court indicated in Hessel, supra, after considering all of the questions raised by petitioner, they had sympathy for petitioner and the misfortunes which befell him but correctly concluded there simply was nothing which could be redressed by the action he brought in federal court.

Petitioner has not shown by his pleadings any good reason why this court should grant

certiorari and reconsider the Court of Appeals decision. It is submitted that in fact there is none.

These respondents would, therefore, request that petitioner's request for a writ of certiorari be denied.

GARY K. NELSON
The Attorney General of Arizona



JAMES R. REDPATH
Assistant Attorney General
206 South 17th Avenue
Phoenix, Arizona 85007
Attorneys for Respondents,
State of Arizona, et al

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APPENDIX

ORNEY GENERAL
TE OF ARIZONA

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLARENCE JOHN HESSEL,
Plaintiff-Appellant,

vs.

STATE OF ARIZONA, et al.,
Defendants-Appellees.

No. 71-1721

[August 9, 1972] DOCKET #W4

Appeal from the United States District Court
for the District of Arizona

Before: BARNES and HUFSTEDLER, Circuit Judges, and SCHNACKE,* District Judge

PER CURIAM:

Mr. Hessel's unhappy plight began when he transferred his automobile insurance from one carrier to another, and he was involved in an accident for which both carriers denied coverage. Pursuant to Arizona's Financial Responsibility Act (Ariz. Rev. Stat. § 28-1142A and B), the Superintendent of the Motor Vehicle Division of the Arizona Highway Department ordered suspension of Mr. Hessel's driver's license and of his motor vehicle registration. He was given an administrative hearing on December 22, 1969, in which the suspension order was upheld upon the determination that there was a reasonable probability that judgment would be rendered against him. Although an appeal to superior court of the State of Arizona from the administrative decision was authorized (Ariz. Rev. Stat. § 28-1122B), he did not appeal. His efforts to use self-help to retain his license plates resulted in a misdemeanor conviction. He lost his job and was unable to retain private counsel to help him. Subsequently he was exonerated from civil liability for the accident. On December 10, 1970,

*Honorable Robert H. Schnacke, United States Judge for the Northern District of California, sitting by designation.

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he filed an affidavit reporting the dismissal of the civil action and a certificate of insurance as provided by Ariz. Rev. Stat. § 28-1144, and his driving privileges were restored.

He filed this action in propria persona against the State of Arizona and against a series of Arizona officials seeking damages to redress his grievances that followed the suspension order. The district court dismissed his case for failure to state a claim upon which relief can be granted.

Mr. Hessel has interwoven his attacks upon his misdemeanor conviction, on the constitutionality of the Financial Responsibility Act, and on the administrative proceedings that resulted in the suspension order. Because he failed to exhaust his available remedies in the state courts, he could not collaterally attack either his misdemeanor conviction or his administrative proceeding in the federal courts, even if we assumed, *arguendo*, that his complaint could be construed to state some claim in the nature of habeas corpus.[1]

The focal point of his complaint is the challenge to the constitutional validity of Arizona's Financial Responsibility Act. The Act has withstood constitutional attack in *Schechter v. Killingsworth* (1963) 93 Ariz. 273, 380 P.2d 136. The Act does not have the constitutional infirmity for which the Supreme Court struck down Georgia's Motor Vehicle Safety Responsibility Act in *Bell v. Burson* (1971) 402 U.S. 535. We are not persuaded in this case to disturb *Schechter*. The efforts to attack the Act on grounds other than those discussed in *Bell* and *Schechter* do not have sufficient legal merit to warrant discussion.

Although we have sympathy for Mr. Hessel in the misfortunes that befell him, we agree with the district court that none of them can be redressed by the action he brought in the federal court.

The judgment is AFFIRMED.

---

[1]Mr. Hessel has not undertaken postconviction relief in Arizona; hence, Arizona has not had an opportunity to determine the effect, if any, of *Argersinger v. Hamlin* (1972) ..... U.S. ..... [40 U.S.L.W. 4679] upon the misdemeanor conviction.

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AFFIDAVIT OF SERVICE

STATE OF ARIZONA)
) ss.
County of Maricopa)

JAMES R. REDPATH, counsel for Respondents, State of Arizona, et al, herein, certifies that three (3) copies of the foregoing Brief, in its entirety, was served upon Petitioner and Counsel for Respondents Witter and McCown in the following manner:

By certified mail, postage prepaid, return receipt requested, to:

CLARENCE JOHN HESSEL
5829 North 65th Avenue
Glendale, Arizona 85301
Petitioner

T. GALE DAKE
22 Luhrs Arcade
Phoenix, Arizona 85003
Attorney for Respondents
Witter and McCown

on the 28th day of December, 1972.

James R Redpath

JAMES R. REDPATH
Assistant Attorney General

SUBSCRIBED AND SWORN to before me this 28th day of December, 1972.

Charlene K. Hansen

Notary Public

My Commission Expires:

July 15, 1974

No. 78-3677

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SUPREME COURT, U.S.

CLARENCE JOHN HESSEL,

Petitioner,

v.

THE HONORABLE STATE OF ARIZONA; ARIZONA MOTOR VEHICLE DEPARTMENT OF THE STATE OF ARIZONA; MR. DAVID H. [illegible], Superintendent of the Motor Vehicle Division; MR. JOHN HUTCHER, Hearing Officer for the Motor Vehicle Division; MR. CHESTER HOWARD, Pick-up Man for the Motor Vehicle Division; MR. CHRISTOPHER LEEDS, Supervisor of the Maintenance Division; MR. JOHN AMEY, Attorney for the State of Arizona; MR. L.R. HYDER, Judge for the City of Glendale, Arizona; MR. JERRY EDWARD McCANN, Police Lt., Glendale, Arizona,

Respondents.

Atts Reply BRIEF

REPLY BRIEF and REBUTTAL TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

CLARENCE JOHN HESSEL
Petitioner

In Propria Personae

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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1972

No. 72-5677

CLARENCE JOHN HESSEL,

Petitioner,

-vs-

THE HONORABLE STATE OF ARIZONA; ARIZONA HIGHWAY DEPARTMENT OF THE STATE OF ARIZONA; MR. DAVID H. CAMPBELL, Superintendent of the Motor Vehicle Division; MR. JOHN BEYDLER, Hearing Officer for the Motor Vehicle Division; MR. ORVILLE BOWMAN, Pick-up man for the Motor Vehicle Division; MR. CHRISTOPHER LEESE, Supervisor of the Maintenance Division; MR. JOHN AMEY, Attorney for the State of Arizona; MR. L.R. WITTER, Judge for the City of Glendale, Arizona; MR. JERRY EDWARD McCOWN, Police Lt., Glendale, Arizona,

Respondents.

REPLY BRIEF and REBUTTAL TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1972

No. 72-5077

[illegible] JOHN HESSEL,

Petitioner,

-vs-

[illegible] STATE OF ARIZONA;
[illegible] HIGHWAY DEPARTMENT OF THE
STATE OF ARIZONA; MR. DAVID H.
[illegible], Superintendent of the
Motor Vehicle Division; MR. JOHN BEICHER,
Hearing Officer for the Motor Vehicle
Division; MR. ORVILLE ROPMAN, Tick-up
Man for the Motor Vehicle Division;
[illegible] CHRISTOPHER [illegible], Supervisor of the
Enforcement Division; MR. JOHN DOES,
Attorney for the State of Arizona; M. R.
[illegible], Judge for the City of Glendale,
Arizona; MR. JERRY HOWARD MCCUNE, Police
[illegible], Glendale, Arizona,

Respondents.

REPLY BRIEF and MOTION TO RESPONDENTS'

SUPPLY IN OPPOSITION TO PETITION FOR A

WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This matter is an action for damages (in the sum of $60,000.00, plus all Court costs, filing fees, jury fees, attorneys' fees, if any; loss in earning power, loss of retirement, loss of Social Security benefits, loss of vacation pay and sick leave over the following years; and for punitive damages in the amount of five million dollars) specifically concerning the State of Arizona's Financial Responsibility, Drivers' Licensing and Motor Vehicle Acts and the enforcement of these Acts, without judicial process, on this petitioner and the people of the United States of America and the State of Arizona. These Acts constitute bills of attainder, which is prohibited to all the States of the Union (Constitution of the United States of America, Article I, Section 10, first paragraph - Powers Denied to State Governments).

That on October 4, 1969, while this petitioner was a mere by-stander, he was struck by a motorcycle driver; that said motorcycle driver was clearly at fault. That, at that time, the insurance policy on petitioner's car was in the process of being transferred to another company and, because appellant's car was not insured at the time of the accident, his driver's license was ordered suspended (on December 2, 1969) without any trial or due process of law. That petitioner refused to surrender the license plates on his vehicle and said license plates were seized off petitioner's vehicle on August 4, 1970. That this petitioner and appellant was outlawed from the public rights-of-way by these wrongful acts, said rights-of-way being open to any citizen of the world ordinarily.

That as a result of these unlawful acts, to wit, the suspension of appellant's driving license and the seizure of appellant's license plates, and the subsequent effect of appellant being prohibited from traveling freely to and from work, this appellant and petitioner lost his job and means of support. That as a consequence, appellant was forced to retire early and make premature claim to his Social Security pension; that ordinarily, he would have been entitled to work 7-1/2 additional years before retiring. That because of this forced, premature retirement, petitioner's pension and Social Security benefits were markedly reduced.

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STATEMENT OF THE CASE

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QUESTIONS PRESENTED

The primary question presented by petitioner in his efforts to have his appeal heard is whether the United States Court of Appeals for the Ninth Circuit erred in upholding appellees' Motion to Dismiss. In order to resolve this question, however, it is necessary for this Court to determine the issue presented below, to wit: Were petitioner's constitutional rights not violated?

STATEMENT OF FACTS

October 4, 1969. Petitioner is struck by motorcycle driver; motorcycle driver is clearly at fault.

December 2, 1969. David H. Campbell, Superintendent of the Motor Vehicle Division, Arizona State Highway Department, ordered petitioner's driver's license suspended and his automobile license plates revoked.

December 15, 1969. Police ordered to apprehend appellant and petitioner's vehicle on any street or highway in the State of Arizona.

August 4, 1970. Appellant and petitioner jailed for anticipated term of 30 days (with option of paying $100.00 fine) for refusing to surrender plates or driver's license. Appellant was prohibited from having witnesses who had been properly subpoened and who were in the courtroom at the time of sentencing. Petitioner first jailed in the Glendale City Jail and then transferred to the Maricopa County Jail because he lacked funds to pay the $100.00 fine. This act constituted one of double jeopardy because the petitioner had previously been hailed into the Phoenix Court on the same charge -- which was dismissed by the Judge because the State of Arizona was not represented at the hearing. Your attention is directed to the attached affidavits of Messrs. Fred Warren and D. W. Johnson which substantiate the facts as set forth in this paragraph. These affidavits have previously been filed in this matter.

August 4, 1970. License plates removed from two of petitioner's cars while said cars were parked on private property, without any judicial process.

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August 5, 1970. Petitioner released from jail as a result of $100.00 fine being paid by personal friend.

January 19, 1971. Original complaint filed in the U.S. District Court, Phoenix, County of Maricopa, State of Arizona, by plaintiff-appellant-petitioner.

January 25, 1971. Petitioner filed amended complaint in above named Phoenix U.S. District Court to show correct spelling of one of appellees' names.

March 22, 1971. Judgment entered against appellant-petitioner, granting defendants' motion to dismiss.

April 6, 1971. Notice of Appeal filed in U.S. District Court for the State of Arizona.

May 3, 1971. Motion and Affidavit to Proceed on Appeal in Forma Pauperis from District Court to Court of Appeals filed by appellant-petitioner.

May 5, 1971. Order to Proceed on Appeal in Forma Pauperis from District Court to Court of Appeals signed by Hon. Walter E. Craig, U.S. District Court.

July 3, 1972. Appeal heard in United States Court of Appeals for the Ninth Circuit in Los Angeles, California.

August 9, 1972. Previous judgment upheld.

October 11, 1972. Petitioner makes motion for Writ of Certiorari to the United States Supreme Court.

November 9, 1972. Case docketed as No. 72-5677 by Supreme Court Clerk.

November 16, 1972. This petitioner files Motion and Order for the Posting of a Cash Bond by Appellees-Respondents in the Supreme Court. Petitioner also files Motion for Temporary Injunction and Motion for Writs of Prohibition.

December 1, 1972. Justice William O. Douglas denies petitioner's Motion for the Posting of a Cash Bond by Appellees-Respondents and Motion for Temporary Injunction and for Writs of Prohibition.

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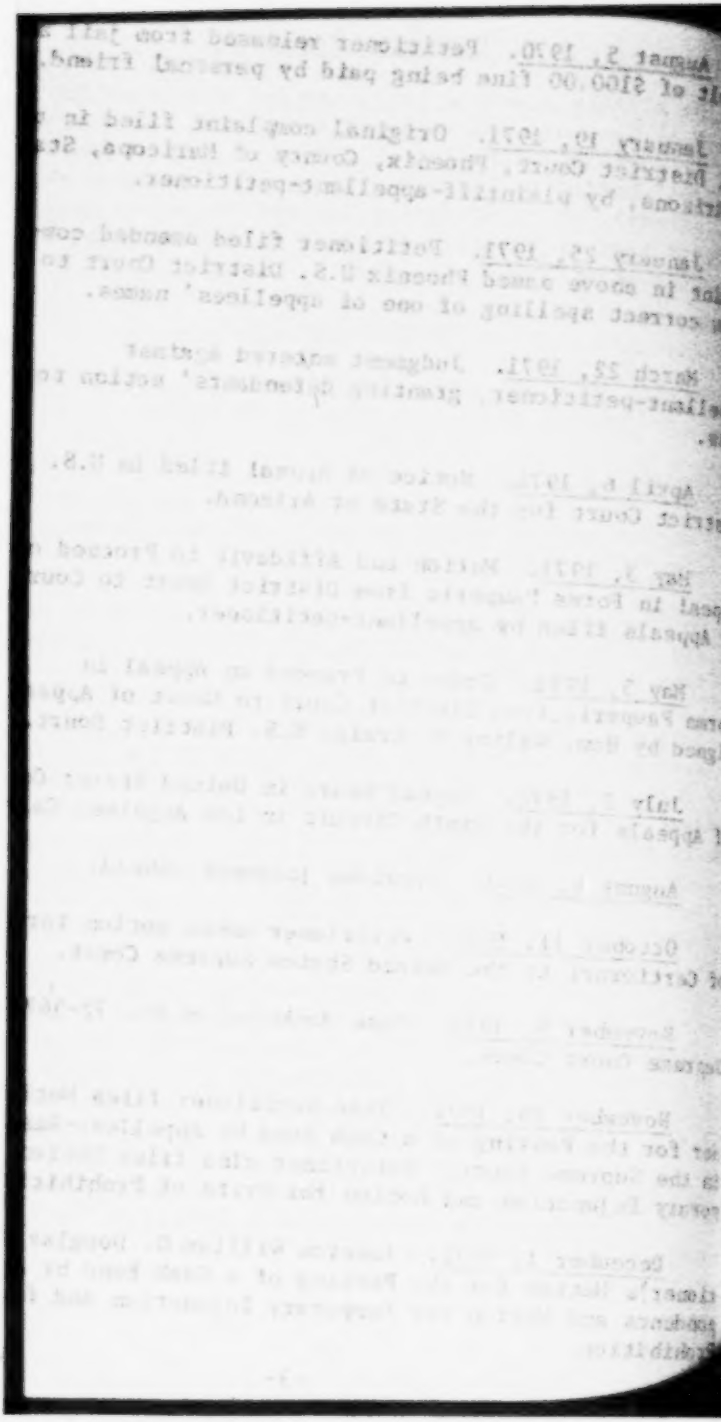

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December 30, 1972. Brief in Opposition to Petition For Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, prepared by respondent, received by this petitioner.

ASSIGNMENTS OF ERROR

This petitioner contends that the United States Court of Appeals for the Ninth Circuit erred in upholding the judgment against this petitioner, for the reason that there existed a genuine issue of fact to be resolved, to wit: Responsibility Laws, as practiced in the State of Arizona, unconstitutionally discriminate against the poor (which includes many elderly and many very young persons). It should also be noted that there exists no compulsory law in Arizona for motor vehicle insurance for all persons and that 30 - 40% of the drivers carry no insurance because of their financial condition.

Further, that the Courts erred in granting judgment in favor of appellees in view of the allegations and facts presented by this appellant-petitioner, because these were of such nature that, as a matter of law, they would entitle this appellant to equitable relief.

ARGUMENT

That appellant-petitioner's rights under the following Amendments to the Constitution of the United States of America have been violated:

AMENDMENT I. "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

AMENDMENT IV. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

AMENDMENT V. "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment

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f a grand jury, except in cases arising in the land or naval orces, or in the militia, when in actual service in time of war r public danger; nor shall any person be subject for the same ffense to be twice put in jeopardy of life or limb; nor shall e compelled in any criminal case to be a witness against him- elf, nor be deprived of life, liberty or property, without ue process of law; nor shall private property be taken for ublic use, without just compensation."

AMENDMENT VI. " . . . [the accused] to have compulsory rocess for obtaining witnesses in his favor, and to have the ssistance of counsel for his defense."

AMENDMENT VII. "In suits at Common Law . . . the right to rial by jury shall be preserved. . . "

AMENDMENT IX. "The enumeration in the Constitution of cer- ain rights shall not be construed to deny or disparage others etained by the people." (The right to travel freely at home nd abroad and to work for a living.)

AMENDMENT X. "The powers not delegated to the United States y the Constitution, nor prohibited by it to the States, are re- served to the States respectively, or to the people." (The ight to means of private transportation and the right to use of public rights-of-way for all the people.)

AMENDMENT XIV, Section 1. " . . . nor shall any State de- prive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Further attention is directed to Ninth Circuit Case No. 23463, Adolfo Perez, et ux, vs. David H. Campbell, Superintendent Motor Vehicle Division, et al, which was reversed by the United States Supreme Court on the 31st day of May, 1971.

Also, 121 Ga. App. 418, 174 S.E. 2d 235, reversed and re- anded; Bell vs. Burson, No. 5586 in the Supreme Court of the Unite States, October term, 1970; decided May 24, 1971, wherein it was stated:

Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves

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state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.

In consideration of the foregoing, it is apparent that he lower Courts must have completely ignored appellant-etitioner's plea for equitable relief.

On July 29, 1971, appellant-petitioner received a certified letter (No. 0501359) from the Arizona State Highway Department containing an Order of Suspension of Driver's License nd Demand to Surrender Plates off his vehicles. This order as dated July 28, 1971. At this time, appellant-petitioner as fully covered by all insurance required by the unconstitional Financial Responsibility Law. This Order of Suspension as made without any judicious proceeding whatsoever or any lawful hearing. Appellant-petitioner's insurance agent was otified and said insurance agent contacted the head insurance office in Santa Ana, California; it was then ascertained that the State of Arizona had not been sent proper notice. This istake was immediately rectified by telegram to the State of Arizona Highway Department whereupon the State of Arizona, on August 9, 1971, reinstated appellant-petitioner's driver's license and all automobile licenses. However, the State of Arizona failed to apologize for any of their unlawful actions. Thus, petitioner was allowed to file for triple damages, which he properly did.

CONCLUSION TO REPLY

Appellant-petitioner would respectfully call to the attention of this Honorable Court that the appellant-petitioner and all the appelle-respondents, in addition to their attorneys involved herein, have all taken the oath of office and sworn to uphold, with their lives if necessary, THE CONSTITUTION OF THESE UNITED STATES OF AMERICA. I think you will find that some of them have violated this oath -- plus the members of the Legislature who passed this BILL OF ATTAINDER.

In view of the foregoing, it would seem only reasonable that the decisions of the District Court for the State of Arizona and the United States Court of Appeals for the Ninth Circuit should be reversed.

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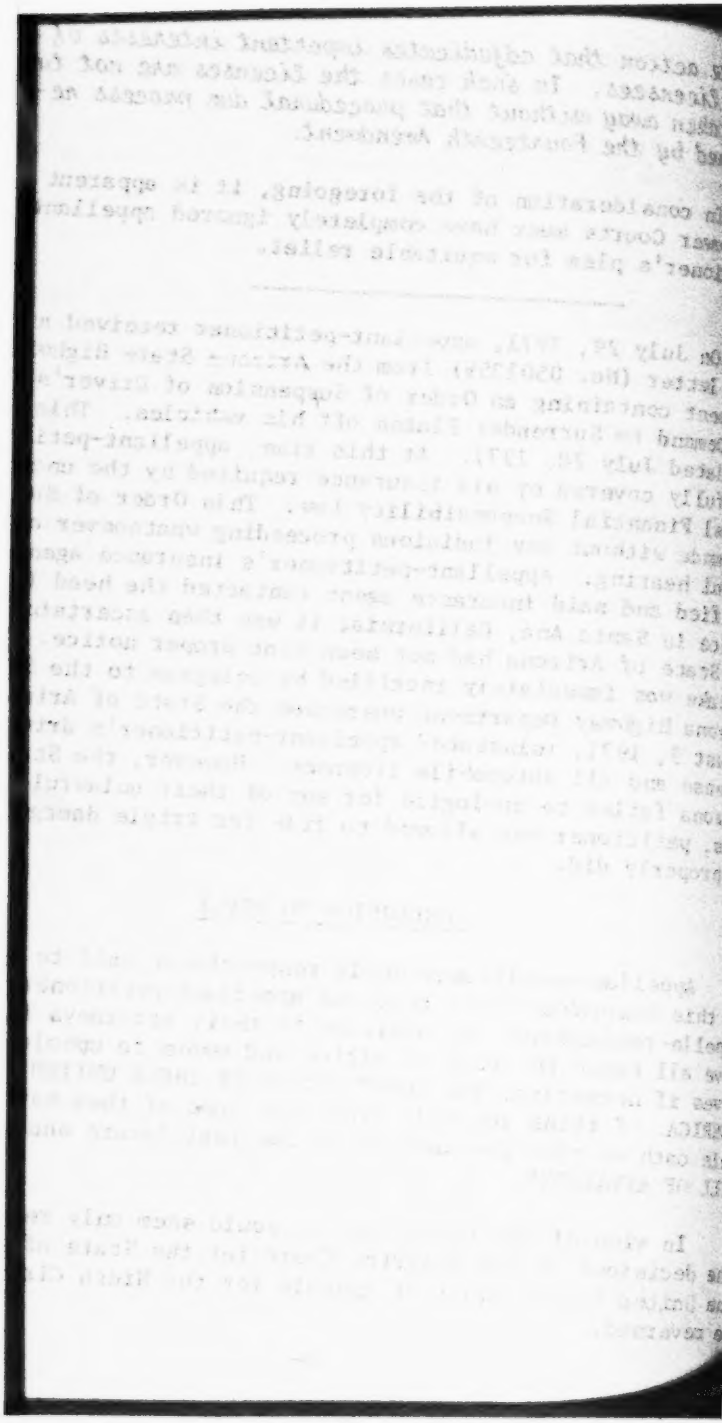

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Rebuttal

With reference to pages 2, 3 and 4 of respondents' brief (1. (b) A concise statement of the grounds on which the jurisdiction of this court is invoked), petitioner answers this point as follows:

Refer to the United States Bill of Rights, Article No. 1, and the phrase at the end thereof: "THE RIGHT OF THE PEOPLE TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES."

Petitioner responds to respondents' paragraphs (c), (d), (g) and (h) as follows:

The Law that became effective September 1, 1948 and which is Section 241 of Title 18 (known as the U.S. Criminal Code) makes it a Federal felony "if two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any Right or Privilege secured to him by the Constitution or Laws of the United States, or because of his having so exercised the same . . . they shall be fined not more than $5,000.00 or imprisoned not more than ten years, or both."

It can be easily seen that all of the DEFENDANTS named herein have conspired against the petitioner, i.e., in the State of Arizona there is no COMPULSORY DRIVERS INSURANCE LAW - yet, the aforementioned State and persons try to make the Financial Responsibility Law cover drivers (POST FACTO) after the event of any accident, whether they caused same or were entirely innocent in its happening. They also use the Drivers License Laws and the Motor Vehicle Licensing Laws to enforce the Financial Responsibility Act, a true bill of attainder, which is forbidden in the U.S. Constitution to all States and the Federal Government. Therefore, all three of these Acts should be declared unconstitutional and prohibited to all States. In fact, they are acting as Agents and Enforcers in providing customers for the insurance companies operating in the State of Arizona, by using the GREAT POWER of the State to force compliance with certain types of insurance on automobiles while, at the same time, one CANNOT BUY DRIVER'S INSURANCE, if one owns his own vehicle. The foregoing has gone on for a long time (in Arizona, since 1952), but the fact that a thing has been done repeatedly does not make it any more legal.

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In the State of Arizona as recently as 1969, the State Supreme Court affirmed the "right to drive" as a RIGHT AND NOT A PRIVILEGE. This was also done in California and several more States about the same time -- BUT, the Police Powers in this State and the Inferior Courts ignore this ruling by the State Supreme Court; they all treat the Ownership and Operation of motor vehicles as a distinct privilege which they easily revoke at the slightest opportunity without any due process whatsoever. The ownership of vehicles (an extension of one's home) and the registration of drivers should be in a FASHION such as is used to register VOTERS -- forever and/or until their death. The annual purchase of so-called licenses to OWN or to OPERATE defeats the RIGHTS to OWN and OPERATE such vehicles and makes it look LIKE A PRIVILEGE instead of a TRUE RIGHT as defined by many courts. Even the United States SUPREME COURT HAS SO RULED.

The lawyers for the respondents seem to look down upon this petitioner for his failure to have a law firm represent him and secondly, for his failure to know the rules of this Court. In response, petitioner states that (1) he has tried to hire a lawyer and found them too expensive. One wanted $3,500.00 in cash, on his desk, before even discussing the case. Petitioner then went to the State Bar Association of Arizona. After getting the run-around from them with no success, petitioner was sent to the Maricopa County Legal Aid Society in Glendale, Arizona. After petitioner made an appointment with them, he was provided with some forms to fill out in order to qualify -- which he did. This organization did take petitioner's case and provided him with great help for a short while. Then, in January, 1971, the Honorable Governor JACK WILLIAMS vetoed this organization's funds from the U.S. Government; this the Governor also did the next year, 1972. On both occasions, the Legal Aid Society was forced to drop their case load; they CLOSED UP SHOP and this petitioner was unable to avail himself of their services.

The actions of Arizona's Governor in refusing these funds came as a great shock to petitioner and to a great many other POOR PEOPLE who need this vital service in many ways. This petitioner was hurt doubly because he had voted for the Honorable Jack Williams at the time of his first election. Petitioner wishes to assure all readers that he did not vote for him the second time around.

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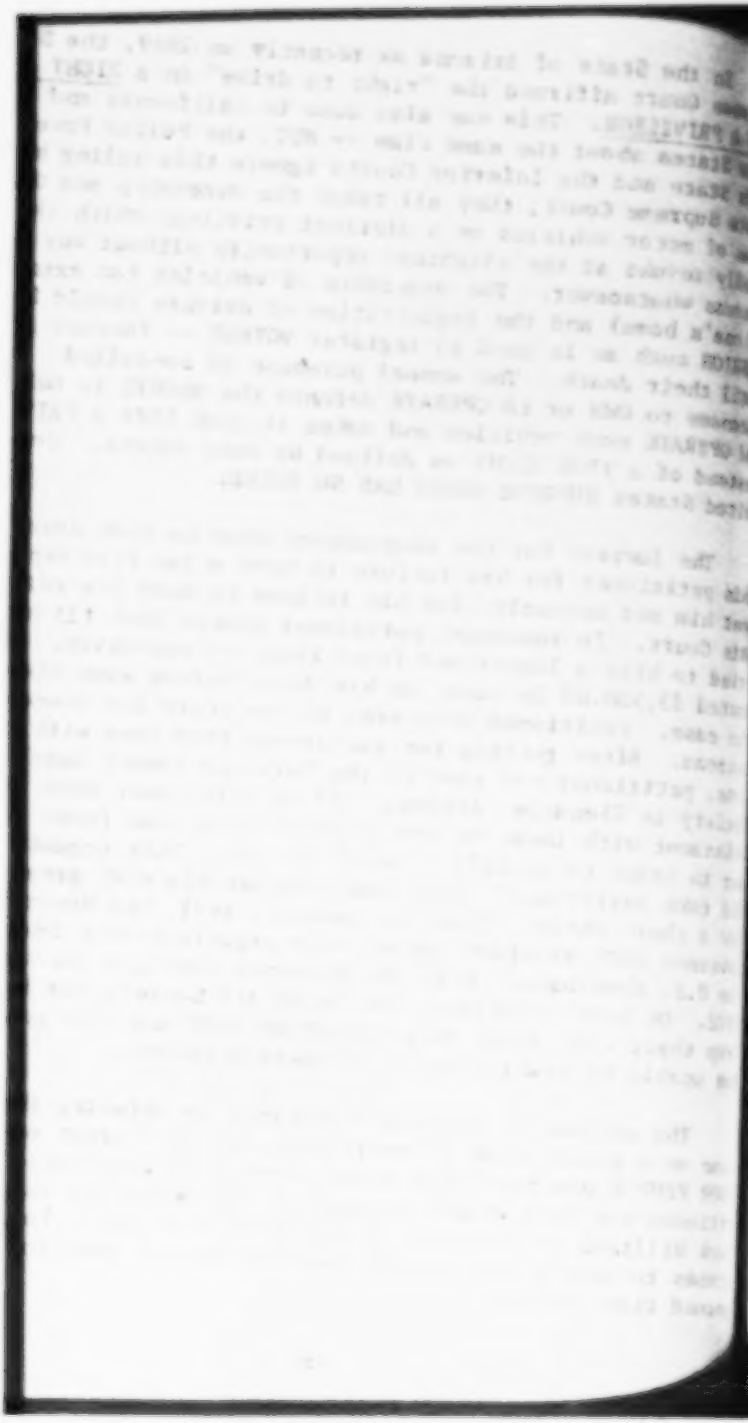

Concerning petitioner's lack of knowledge concerning requirements of the United States Supreme Court as to its rules, this petitioner has sent numerous requests to the Clerk of the United States Supreme Court requesting a COPY of such rules. The Clerk's office has ignored each and every request. This petitioner would be very happy to follow the rules as he well knows that they are very essential and of a great help in expediting the case -- and also in finding the 'LOOP HOLES.' It is petitioner's understanding that, at this very moment, there is a plan underway to make ALL RULES in our Court procedure uniform -- but, sadly, this has not been adapted yet. When it is, this problem will be SOLVED FOR ALL COURTS in the United States of America and a petitioner, such as the one in this case, could easily comply as most libraries would have copies of such rules available to the PUBLIC and the PEOPLES.

The Court of Appeals for the Ninth Circuit in its ruling did not consider the following rights of this petitioner which were violated by the State of Arizona and each and every one of the defendants in this suit:

The right to move about freely at home and abroad and to own private transportation;
The right to privacy in our homes and on our property;
The right to own private property and a home;
The right to work in callings and localities of our choice as free men;
The right to trial by jury -- that we are innocent until proven guilty;
The 1st Amendment right: service of the Government as a protector and a referee;
The right to freedom from arbitrary Government regulation and control (both State and Federal);
The right to sue for loss of job or income or pension funds, due to petitioner's innocence in related matter;
Rights under the First Amendment; also, the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth; and also the Fourteenth Amendment;
The right to life, liberty and the pursuit of happiness, as stated in the Preamble to the Constitution of the United States of America -- which was given by the PEOPLE, for the people of the future as yet unborn, though a minority group

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Failure of this Court to rule in appellant-petitioner's favor will constitute an admission by the Court that the Constitution of the United States stands suspended and that a Police State now exists in the land of the free and the home of the brave.

Respectfully submitted,

Clarence John Hessel

CLARENCE JOHN HESSEL, Appellant-Petitioner
In Propria Persona
and
In Forma Pauperis

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

CLARENCE JOHN HESSEL, upon his oath being first duly sworn, deposes and says:

That he is the plaintiff-appellant-petitioner herein; that the foregoing brief substantiates his petition for a writ of certiorari and is in reply to a brief by respondents that such petition for a writ of certiorari be denied.

That this petitioner subsists solely on social security income, having lost his job when his rights under the Constitution were abused; that he has no means to employ counsel in his behalf in the presentation of his case and, in fact, is so impoverished that the day-to-day demands for food and mortgage payments have become unreasonable. Affiant acknowledges, with gratitude, that the courts have seen fit to allow him to pursue his cause, in his own behalf, in forma pauperis.

That due to unreasonable, unjust and unfavorable rulings against this petitioner as he has pursued his cause all the way to the Supreme Court, he now finds that he must, as of January 15, 1973, relinquish the home that he has owned and

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enjoyed and lived in for these past eleven years. Having lost possession of it, due to his impoverished condition, this petitioner must now move to another area to reside with relatives.

Petitioner further certifies that three (3) copies of the foregoing Brief, in its entirety, were served upon Counsel for respondents State of Arizona, et al, and Witter and McCown in the following manner:

By certified mail, postage prepaid, return receipt requested, to:

JAMES R. REDPATH
Assistant Attorney General
206 South 17th Avenue
Phoenix, Arizona 85007
(Attorney for Respondents State of Arizona, et al)

T. GALE DAKE
22 Luhrs Arcade
Phoenix, Arizona 85003
(Attorney for Respondents Witter and McCown)

on the 13th day of January, 1973.

CLARENCE JOHN HESSEL
Appellant-Petitioner

Subscribed and sworn to before me this 13th day of January, 1973.

Notary Public

My commission expires:

July 30, 1973

AFFIDAVIT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Re: Case No. 71-1721, Clarence John Hessel vs. The State of Arizona; United States Court of Appeals for the Ninth Circuit.

D. W. JOHNSON, of legal age, a resident of 1224 N. 19th Place, Phoenix, Arizona 85006, upon his oath being first duly sworn, deposes and says:

That on December 22, 1969, I took off work to drive Mr. C. John Hessel, a friend of mine, to a hearing in the office of Mr. John Beydler, Hearing Officer for the Arizona Highway Department, Financial Responsibility Section. That Mr. Hessel's driving rights had been suspended and my assistance was necessary in order that he might have transportation. That this hearing was not in a Court of Law; that there was no jury nor judge present, nor any member of the American Bar Association. That the hearing was held by the one official, Mr. Beydler, in a police-state fashion, and it seemed to me that Mr. Beydler's decision had been made before Mr. Hessel appeared.

That on March 31, 1970, I again took off work to drive Mr. C. John Hessel to the Phoenix City Court of Judge Eugene K. Mangum (Summons No. 578-70-Su.), inasmuch as Mr. Hessel's driving rights were still under suspencion. That it was also my purpose to serve as a character witness for Mr. Hessel. That, at that time, Mr. C. John Hessel entered a plea of Not Guilty and trial was set for 9:30 a.m. on April 14, 1970.

That on April 14, 1970, I took off work again to drive Mr. Hessel to the Courtroom of Judge Mangum where, again, I planned to serve as a witness for Mr. Hessel. Mr. Hessel's name and case were called and then the State's man, Mr. Bowman, was called -- and called again 3 times, but Mr. Bowman failed to answer. Mr. Hessel was told that he was free to go, so I left with him.

That on August 4, 1970, at 10:00 a.m., I took Mr. Hessel to the Courtroom of Judge L.R. (Dick) Witter in Glendale, Arizona, where he had been summoned to appear as a defendant in the very matter which had been dismissed on April 14, 1970. That Judge Witter sentenced him to pay a $100 fine or serve 30 days in jail. That he went to jail for 2 days until I was able to pay his fine for him.

That I personally witnessed all the Court actions taken by the State of Arizona against Mr. Hessel. That they were police-state tactics and not those practices guaranteed under the IV and XIV Amendments and rights of common law. That in Judge Witter's Court, Mr. Hessel was not allowed to present his side of the case; that I personally complained to the Judge afterwards that he had been exceptionally hard on the defendant, but to no avail. That Mr. Hessel had an attorney from the Legal Aid Society at that time, but Judge Witter wouldn't allow him to defend Mr. Hessel in Court, stating that it was a criminal case and not a misdemeanor.

D. W. Johnson

Subscribed and sworn to before me this 23rd day of June, 1972, by D.W. Johnson.

Mary L Loyna
Notary Public

My commission expires: 7-30-73

AFFIDAVIT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Re: Case No. 71-1721, Clarence John Hessel vs. The State of Arizona, United States Court of Appeals for the Ninth Circuit

FRED WARREN, 19001 N. 54th Avenue, Glendale, Arizona, upon his oath being first duly sworn, deposes and says:

That I am a legal resident of the County of Maricopa and the State of Arizona.

That during the month of August, 1970, my residence was 5835 N. 65th Avenue, Glendale, Arizona, next door to one Mr. C. John Hessel. That, on August 4, 1970, with my wife and my son Jack (an adult) present, the following acts were witnessed by me at a few minutes before noon:

Two men from the Arizona Motor Vehicle Division entered upon the private property of Mr. C. John Hessel at 5829 N. 65th Avenue, Glendale, Arizona, while at the time he was not at home to protect his property (one of the men's name being Orville Bowman). That they knocked at the door of Mr. Hessel's residence, waited a few minutes, and then, in all haste, proceeded to remove Mr. Hessel's license plates from two of his vehicles, a 1955 and 1958 Cadillac sedan. That in removing these plates from the front and back of each vehicle, they damaged one license plate holder beyond repair and did other minor damage to both vehicles. That neither of these men presented any Court order or a warrant to sieze these items, which were the personal property of Mr. Hessel. After obtaining the plates, they sped off in the direction of Phoenix, Arizona.

It had been our neighborhood custom when Mr. Hessel was absent from home, that I watch out for him, and he did the same for me and my home.

That the above act took place at 5829 N. 65th Avenue, in the City of Glendale, Arizona.

It is my understanding that the above acts on the part of Mr. Orville Bowman and his associate are in violation of Mr. C. John Hessel's rights under the 4th and 14th Amendments of the Laws and the common laws of the United States of America.

Fred Warren

Subscribed and sworn to before me this 23rd day of June, 1972, by Fred Warren.

Mary L Coyne
Notary Public

My commission expires:
7-30-73